

## SENATE BILL No. 79

### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 13-11-2-17; IC 13-13-8; IC 13-14-8-3; IC 13-22-2-4; IC 13-23-1-2.

**Synopsis:** Environmental rule review board. Establishes the environmental rule review board. Prohibits the air pollution control board, water pollution control board, and solid waste management board from adopting a rule that contains a provision that is more stringent than a corresponding federal provision established under federal law until the environmental rule review board approves the rule. Prohibits the environmental rule review board from approving a proposed rule that contains a provision that is more stringent than a corresponding federal provision established under federal law unless the board finds that the provision is necessary to address an emergency situation that is unique to Indiana.

**Effective:** Upon passage; July 1, 2009.

**Kruse**

January 7, 2009, read first time and referred to Committee on Energy and Environmental Affairs.

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First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## SENATE BILL No. 79

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 13-11-2-17, AS AMENDED BY P.L.2-2005,  
2 SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2009]: Sec. 17. (a) "Board", except as provided in subsections  
4 (b) through ~~(i)~~; **(j)**, refers to:

- 5 (1) the air pollution control board;
- 6 (2) the water pollution control board; or
- 7 (3) the solid waste management board.

8 (b) "Board", for purposes of IC 13-13-6, refers to the northwest  
9 Indiana advisory board.

10 **(c) "Board", for purposes of IC 13-13-8, refers to the**  
11 **environmental rule review board.**

12 ~~(c)~~ **(d)** "Board", for purposes of IC 13-17, refers to the air pollution  
13 control board.

14 ~~(d)~~ **(e)** "Board", for purposes of IC 13-18, refers to the water  
15 pollution control board.

- 16 ~~(e)~~ **(f)** "Board", for purposes of:  
17 (1) IC 13-19;



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- (2) IC 13-20;
- (3) IC 13-22;
- (4) IC 13-23, except IC 13-23-11;
- (5) IC 13-24; and
- (6) IC 13-25;

refers to the solid waste management board.

~~(f)~~ (g) "Board", for purposes of IC 13-21, refers to the board of directors of a solid waste management district.

~~(g)~~ (h) "Board", for purposes of IC 13-23-11, refers to the underground storage tank financial assurance board.

~~(h)~~ (i) "Board", for purposes of IC 13-26, refers to the board of trustees of a regional water, sewage, or solid waste district.

~~(i)~~ (j) "Board", for purposes of IC 13-27 and IC 13-27.5, refers to the clean manufacturing technology board.

SECTION 2. IC 13-13-8 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

**Chapter 8. Environmental Rule Review Board**

**Sec. 1. The environmental rule review board is established.**

**Sec. 2. (a) The board consists of:**

- (1) three (3) voting members; and
- (2) four (4) nonvoting advisory members.

(b) The three (3) voting members of the board consist of the following:

- (1) The commissioner or the commissioner's designee.
- (2) Two (2) voting members appointed by the governor as follows:
  - (A) One (1) voting member who represents business and industry.
  - (B) One (1) voting member who represents small business.

(c) The four (4) nonvoting advisory members shall be appointed as follows:

- (1) The president pro tempore of the senate shall appoint two nonvoting advisory members who are:
  - (A) members of the senate; and
  - (B) not affiliated with the same political party.
- (2) The speaker of the house of representatives shall appoint two (2) nonvoting advisory members who are:
  - (A) members of the house of representatives; and
  - (B) not affiliated with the same political party.

(d) An appointment made under this section is valid for two (2) years from the date of the appointment.

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(e) If a vacancy occurs among the members of the board, the appointing authority of the member whose position is vacant shall fill the vacancy by appointment.

Sec. 3. (a) Each member of the board who is not a state employee is not entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). The member is, however, entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(b) Each member of the board who is a state employee but who is not a member of the general assembly is entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(c) Each member of the board who is a member of the general assembly is entitled to receive the same per diem, mileage, and travel allowances paid to legislative members of interim study committees established by the legislative council. Per diem, mileage, and travel allowances paid under this subsection shall be paid from appropriations made to the legislative council or the legislative services agency.

Sec. 4. (a) The governor shall designate a voting member to serve as chairperson of the board.

(b) The department shall provide staff support for the board.

Sec. 5. (a) The board shall review all rules proposed to be adopted by one (1) of the boards.

(b) Subject to subsection (c), if the board determines that a rule contains a provision that is more stringent than a corresponding federal provision established under federal law, the rule may not be finally adopted until a majority of the three (3) voting members appointed to the board vote to approve the rule.

(c) The board may not approve a rule that contains a provision that is more stringent than a corresponding federal provision established under federal law unless the board finds that the provision is necessary to address an emergency situation that is unique to Indiana.

SECTION 3. IC 13-14-8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) A rule or

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standard adopted by a board may:

- (1) make different provisions as required by varying circumstances and conditions for different contaminant sources and for different geographical areas;
- (2) be made applicable to sources outside Indiana that:
  - (A) are causing;
  - (B) are contributing to; or
  - (C) could cause or contribute to;
 environmental pollution in Indiana; and
- (3) make provision for abatement standards and procedures:
  - (A) concerning occurrences, emergencies, or pollution; or
  - (B) on other short term conditions constituting an acute danger to health or to the environment.

**(b) A rule adopted by a board may not contain a provision that is more stringent than a corresponding federal provision established under federal law unless the board obtains approval to adopt the rule:**

- (1) from the environmental rule review board under IC 13-13-8; and**

- (2) before the board takes final action to adopt the rule.**

SECTION 4. IC 13-22-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) The board shall adopt rules under IC 4-22-2 and IC 13-14-8 on the proper and safe transportation, treatment, storage, and disposal of hazardous wastes. Whenever possible, the rules adopted under this section must allow for variation in Indiana with regard to population density, climate, and geology.

**(b) Subject to subsection (c),** rules adopted under this section concerning incinerators used as hazardous waste facilities may **not** establish requirements **that are** more stringent than the requirements for hazardous waste incinerators established by regulations adopted by the Administrator of the United States Environmental Protection Agency under the following statutes:

- (1) The federal Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.).
- (2) The federal Clean Air Act (42 U.S.C. 7401 et seq.), as amended by the federal Clean Air Act Amendments of 1990 (P.L.101-549).

**(c) A rule adopted under this section may contain a provision that is more stringent than a corresponding federal provision established under federal law if the board obtains approval to adopt the rule:**

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(1) from the environmental rule review board under IC 13-13-8; and

(2) before the board takes final action to adopt the rule.

SECTION 5. IC 13-23-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) The board shall adopt rules under IC 4-22-2 and IC 13-14-8 for the establishment and operation of the program established under section 1 of this chapter.

(b) **Subject to subsection (d)**, the rules ~~must~~ may not be **more or** less stringent than the regulations adopted by the Administrator of the United States Environmental Protection Agency under Section 9003 of the federal Solid Waste Disposal Act, as amended (42 U.S.C. 6991b, as amended).

(c) The rules adopted under subsection (a) must include the following:

(1) Requirements for maintaining:

(A) a leak detection system;

(B) an inventory control system coupled with tank testing; or

(C) a comparable system or method;

designed to identify releases in a manner consistent with the protection of human health and the environment.

(2) Requirements for maintaining records of any:

(A) monitoring;

(B) leak detection system;

(C) inventory control system or tank testing; or

(D) comparable system.

(3) Requirements for reporting of:

(A) any releases; and

(B) corrective action taken in response to a release.

(4) Requirements for ordering or taking corrective action in response to a release.

(5) Requirements for closure of underground storage tanks to prevent future releases of regulated substances into the environment.

(6) Requirements for maintaining evidence of financial responsibility for:

(A) taking corrective action; and

(B) compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of an underground storage tank.

(7) Standards of performance for new underground storage tanks.

(8) Requirements for the following:

(A) Providing notice to the department of the existence of

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operational and nonoperational underground storage tanks, as required under 42 U.S.C. 6991a(a).

(B) Providing the information required on the form prescribed under 42 U.S.C. 6991a(b)(2).

(C) Providing notice, by any person who sells a tank intended to be used as an underground storage tank, to the purchaser of that tank of the owner's notification requirements established by this article and 42 U.S.C. 6991a(a).

**(d) A rule adopted under this section may contain a provision that is more stringent than a corresponding federal provision established under federal law if the board obtains approval to adopt the rule:**

**(1) from the environmental rule review board under IC 13-13-8; and**

**(2) before the board takes final action to adopt the rule.**

**SECTION 6. [EFFECTIVE UPON PASSAGE] (a) The:**

**(1) governor;**

**(2) president pro tempore of the senate; and**

**(3) speaker of the house of representatives;**

**shall make their initial appointments of the voting and nonvoting advisory members of the environmental rule review board under IC 13-13-8-2, as added by this act, before July 1, 2009.**

**(b) This SECTION expires July 2, 2009.**

**SECTION 7. An emergency is declared for this act.**

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